

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ERIC CHATMAN,

Plaintiff,

7-11 COMPANY, et al.,

## Defendants.

Case No. 2:18-cv-00220-JAD-PAL

# **REPORT OF FINDINGS AND RECOMMENDATION**

(IFP App. – ECF No. 1)

12 This matter is before the court on Plaintiff Eric Chatman's Application to Proceed *In  
13 Forma Pauperis* (ECF No. 1). This application is referred to the undersigned pursuant to 28 U.S.C.  
14 § 636(b)(1)(B) and LR IB 1-4 of the Local Rules of Practice.

15 Mr. Chatman is a prisoner in the custody of the California Department of Corrections and  
16 Rehabilitation. He is proceeding in this action *pro se*, meaning without an attorney. Chatman has  
17 submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and requested permission to  
18 proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. §§ 1915 and 1915A. He is no stranger  
19 to the federal courts having filed dozens of lawsuits in 2017 and 2018 in California and Nevada.  
20 However, on at least three occasions, courts have dismissed civil actions that Chatman commenced  
21 while incarcerated as frivolous or for failure to state a claim upon which any relief may be granted.<sup>1</sup>

22       Federal law provides that a prisoner may not proceed IFP if he has, on three (3) or more  
23 prior occasions, filed a federal action or appeal while incarcerated that was “dismissed on the  
24 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.”

<sup>1</sup> See *Chatman v. Caesars Palace Co.*, 2:18-cv-00224-RFB-VCF (dismissed with prejudice for failure to state a claim upon which relief can be granted); *Chatman v. AM/PM*, Case No. 2:18-cv-00451-RFB-CWH, (dismissed with prejudice as time barred) *Chatman v. Gold Coast Casino*, 2:18-cv-01255-JAD-VCF (dismissed with prejudice as duplicative and failing to state a claim upon which relief can be granted); *Chatman v. Caesars Palace*, 2:18-cv-01256-RFB-VCF (same); *Chatman v. Stratosphere Hotel & Casino*, 2:18-cv-01511-GMN-NJK (dismissed with prejudice as frivolous and delusional); *Chatman v. AM/PM*, 2:18-cv-01608-GMN-NJK (same). The court takes judicial notice of its records in these cases.

1 28 U.S.C. § 1915(g). Instead, the prisoner must pay the full \$400 filing fee in advance unless he  
 2 is “under imminent danger of serious physical injury.” *Id.* Judges in the Southern District of  
 3 California and the Central District of California have recognized that Chatman has accumulated  
 4 more than three “strikes” pursuant to § 1915(g).<sup>2</sup>

5 In his proposed complaint, Mr. Chatman alleges that “around 2004 or 2006” he was robbed  
 6 and kidnapped at a casino and taken to a 7-11 store where a man attempted to stab Chatman for  
 7 \$20. *See generally* ECF No. 1-1. The court finds that these allegations fail to plausibly allege that  
 8 Chatman is in imminent danger of serious physical injury. *See Andrews v. Cervantes*, 493 F.3d  
 9 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g) applies if the complaint makes  
 10 a plausible allegation that the prisoner faced imminent danger of serious physical injury at the time  
 11 of filing). As such, he must pre-pay the \$400.00 filing fee in full.

12 Furthermore, Chatman’s allegations do not state a cognizable civil rights claim under 42  
 13 U.S.C. § 1983. To state a plausible claim under § 1983, a plaintiff must allege (1) his civil rights  
 14 were violated (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48–  
 15 49 (1988). Dismissal of a § 1983 claim is proper when “the complaint is devoid of factual  
 16 allegations that give rise to a plausible inference of either element.” *Najfe v. Frey*, 789 F.3d 1030,  
 17 1036 (9th Cir. 2015). Mr. Chatman fails to identify any federal right or name a state actor; thus,  
 18 he fails to state a claim upon which relief may be granted. Chatman has filed several previous  
 19 complaints making similar allegations of long-past robberies, personal injury, and physical  
 20 altercations on the Las Vegas strip. *See, supra*, n.1. His prior cases were dismissed with prejudice  
 21 as factually frivolous and delusional, time-barred, and failing to state an actionable claim. A  
 22 complaint may be dismissed as frivolous if it “merely repeats pending or previously litigated  
 23 claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). Here, Chatman’s  
 24 complaint is factually frivolous as it largely repeats allegations courts in this district have

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25 <sup>2</sup> *See, e.g., Chatman v. Toyota Motor Sales, USA*, 3:18-cv-01913-WQH-WVG (S.D. Cal. Oct. 25, 2018)  
 26 (citing four cases Chatman filed in that district which were dismissed as frivolous, malicious, or failed to  
 27 state a claim and nine subsequent cases in which he was denied leave to proceed IFP pursuant to § 1915(g));  
 28 *Chatman v. Kmart Corp.*, 2:18-cv-07232-PA-RAO (C.D. Cal. Aug. 21, 2018) (citing three cases Chatman  
 filed in that district which were dismissed for failure to state a claim and as barred by § 1915(g)’s three  
 strikes provision).

1 previously dismissed. Because the complaint fails to state a plausible claim and alleging additional  
 2 facts would not cure the deficiencies, the court finds that amendment would be futile. *See Lopez*  
 3 *v. Smith*, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). The court will therefore recommend  
 4 that the complaint be dismissed with prejudice.

5 Accordingly,

6 **IT IS RECOMMENDED** that:

- 7 1. Plaintiff Eric Chatman's Application to Proceed *In Forma Pauperis* (ECF No. 1) be  
 8 **DENIED**.
- 9 2. The Complaint (ECF No. 1-1) be **DISMISSED** with prejudice.
- 10 3. The Clerk of Court be instructed to enter judgment accordingly.

11 Dated this 17th day of December 2018.

12  
 13   
 14 PEGGY A. TEEN  
 UNITED STATES MAGISTRATE JUDGE

15 **NOTICE**

16 This Report of Findings and Recommendation is submitted to the assigned District Judge  
 17 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for  
 18 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the  
 19 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local  
 20 Rules of Practice, any party wishing to object to a magistrate judge's findings and  
 21 recommendations shall file and serve *specific written objections*, together with points and  
 22 authorities in support of those objections, within 14 days of the date of service. *See also* 28 U.S.C.  
 23 § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to Magistrate  
 24 Judge's Report of Findings and Recommendation," and it is subject to the page limitations found  
 25 in LR 7-3(b). The parties are advised that failure to file objections within the specified time may  
 26 result in the district court's acceptance of this Report of Findings and Recommendation without  
 27 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition,  
 28 failure to file timely objections to any factual determinations by a magistrate judge may be

1 considered a waiver of a party's right to appellate review of the findings of fact in an order or  
2 judgment entered pursuant to the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th  
3 Cir. 1991); Fed. R. Civ. Pro. 72.

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